IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WA.No. 2564 of 2005(B)

AGAINST THE JUDGEMENT IN WPC.22628/2003 Dated 21/06/2004
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APPELLANT: RESPONDENTS
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1. KERALA STATE ELECTRICITY BOARD,
   REPRESENTED BY ITS SECRETARY,
   VYDYUTHI BHAVAN, PATTOM, TRIVANDRUM.

2. THE CHIEF ENGINEER (HRM),
   KSEB, VYDYUTHI BHAVAN,
   PATTOM, TRIVANDRUM.

BY ADV. SRI.KN.N. SUGUNAPALAN, SC, KSEB

RESPONDENTS: PETITIONERS
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1. M.T.AJITHKUMAR,
   METER READER, ELECTRICAL SECTION,
   KSEB, ETTUMANNOOR, R/AT MUNDAKKATTIL THEKKETHIL,
   VEMPALLY.P.O.KOTTAYAM.

2. M.GIRISH, SUB ENGINEER (ELECTRICAL),
   KSEB, THAKAZHY, R/AT PUTHEN MADOM,
   THALAVADY.P.O, ALAPPUZHA.

3. GIRISH.K.A,
   SUB ENGINEER (ELECTRICAL CIRCLE),
   PATHANAMTHITTA, R/AT KOLLIRETHU HOUSE,
   KAIPATTOOR.P.O, PATHANAMTHITTA.

4. SAJU.K.A,
   SUB ENGINEER (ELECTRICAL CIRCLE),
   ATTINGAL, THIRUVANANTHAPURAM, R/AT SAJU NIVAS,
   NILAKKAMUKKU, PERUMKULAM.P.O, ATTINGAL.

5. N.MURALEEDHARAN,
SUB ENGINEER, ELECTRICAL SECTION,
KARUKACHAL.

6. J.RAMESH,
SUB ENGINEER, 66KV SUB STATION,
NEYYATTINKARA.

7. N.SATHEESH KUMAR,
CASHIER, ELECTRICAL SECTION,
VENNIKKULAM, THIRUVALLA.

8. SHEEJA.S,
CASHIER, ELECTRICAL DIVISION,
MAVELIKKARA.

9. T.REMA,
SUB ENGINEER, ELECTRICAL SUB DIVISION,
EZHAMKULAM, ADOOR, PATHANAMTHITTA.

10. M.AMBILY,
SUB ENGINEER, KADAMBANADU,
ADOOR, PATHANAMTHITTA.

11. C.IBRAHIM,
SUB ENGINEER, 66KV SUB STATION,
EDARIODE, MALAPPURAM DISTRICT.

12. JOHN VARGHESE,
SUB ENGINEER, ELECTRICAL SECTION,
PERMUNDA, MALAPPURAM DISTRICT.

13. K.V.REMESHAN,
SUB ENGINEER, ELECTRICAL SECTION,
OTTAPPALAM.

14. DEVASSY.K.O,
SUB ENGINEER, ELECTRICAL SECTION,
KSEB, VARANTHARAPPALLY, THRISSUR.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN
SRI.S.RAMESH BABU
SRI.SALISH ARAVINDAKSHAN
SRI.B.MOHANLAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21/06/2007, ALONG WITH WPC NO. 33726 OF 2005 WPC NO. 33749 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 2564 of 2005
and
W.P.C. Nos. 33726 and 33749 of 2005

Dated: 21st June 2007

JUDGMENT

Radhakrishnan, J.

Common issues arise for consideration in all these cases and we are disposing of these cases by A common judgment.

2. W.A. No 2564 of 2005 has come up for consideration before us on allowing R.P.No 847 of 2006. Writ appeal was originally dismissed by a Bench of this court on 12.07.2006. Judgment was subsequently recalled by allowing R.P.No 847 of 2006. Respondents herein were the petitioners in the Writ Petition No 22628 of 2003 against which W.A. No 2564 of 2005 has been preferred. Writ petition was preferred seeking a writ of certiorari to quash Ext.P8 order dated 04.07.2003 and also for a writ of mandamus directing the

first respondent to fill up the 10% vacancies of Assistant Engineer (Electrical) strictly in accordance with Ext. P1 government order and also for other consequential reliefs.

3. Ext.P1 government order dated 21.03.1990 was issued stating that 10% quota of Assistant Engineers (Civil) and (Electrical) ear-marked for engineering graduates working in the Board will be allowed to be filled up by the K.S.E.Board based on the length of service after acquiring the prescribed academic and technical qualifications, instead of on competitive merit basis. Later the Board issued Ext.P2 Circular dated 19.10.2001 inviting applications from Engineering Graduates (Electrical and Civil) working below the category of Assistant Engineer (Electrical and Civil) for appointment to the post of Assistant Engineer (Electrical and Civil). Ext. P3 Circular was issued on 01.06.2002 preparing a list of electrical engineering graduates as on 01.06.2002 workiing below the category of Assistant Engineer (Electrical) who are eligible for consideration of appointments or re-assignment of appointments as Assistant Engineers (Electrical) against the 10% quota and who have not yet been appointed or given re-assignment of appointments as Assistant Engineers (Electrical) in the 10% quota

as on date. Later another circular, Ext.P4, was issued on 10.06.2002 by the Board along with another list. Petitioners in the writ petition figured in the lists prepared along with Exts. P3 and P4 circulars. Since no action was taken by the Board to appoint them as Assistant Engineers they filed O.P. No 15700 of 2000 which was disposed of by this court on 16.06.2000 directing the Board to make appointments to the 10% quota. Yet another writ petition, O.P.No 1580 of 2003, was also filed and it was disposed of on 18.01.2003. Without giving effect to the lists prepared by the Board, order dated 04.07.2003 was issued by the Board stating as follows:

> "Recently, in the case of method of appointment of Assistant Engineer (Mech.), Government had directed that the recruitment under Departmental Quota from among qualified in service candidates should also be through PSC (in such appointment should also be considered as direct recruitment). This direction of Government has been agreed to by the Board in the case of recruitment of Assistant Engineer (Mech.) and orders were issued accordingly in the B.O.(FB) No 450/2003 (Estt.11/6629/93) dated 04.04.2003.
>
> In the light of the above direction, Board re-examined the method of appointment of Assistant Engineer (Ele.) and Assistant Engineer (Civil) under 10% quota and decided to make appointment by transfer to the post of Assistant Engineer (Ele) and Assistant Engineer (Civil) in the 10% quota ear marked for inservice candidates through Public

> Service Commission as in the case of Assistant Engineer (Mech.) and the same has been forwarded to the Government for approval."

Aggrieved by the above order, petitioners have preferred the present writ petitions. Later Government issued Ext.P11 order dated 01.02.2005 modifying the earlier government orders dated 23.11.1983 and 21.03.2000 endorsing the proposal to make appointment by transfer to the post of Assistant Engineer (Civil) and Assistant Engineer (Electrical) in the 10% quota ear marked for in service candidates through Public Service Commission. Petitioners submitted before the learned single judge that the Board was not justified in issuing Ext P8 order and the Governemnt Ext P11 order. They contended that Exts. P8 and P11 can operate only prospectively and vacancies which arose prior to the issuance of Exts. P8 and P11 are to be filled up only on the basis of the lists prepared along with Exts.P3 and P4. We find force in the contention of the counsel for the petitioners that executive orders issued by the Board as well as the Government can have only prospective operation. We therefore find no merit in the writ appeal.s and the same are dismissed. Judgment of the learned

single judge is confirmed and W.P.C. Nos. 33726 and 3374 9 would stand allowed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

21/06/2007
en

[true copy]

WPC 33726 of 2005

Appendix
Petitioners' exhibits:

Ext.P1 - True copy of the order No EB1(a)/AE(Ele)/158/2004 dated 15.6.2004 of the second respondent.
Ext.P2 - True copy of the order No EB1(a)/AE(Ele)/158/2005 dated 1.1.2005 of the second respondent.
Ext.P3 - True copy of ;the G.O.(Ms) No 13/90/FD dated 21.3.1990
Ext.P4 - True copy of; the G.O.(Ms) No 2/05/PD dated 1.2.2005
Ext.P5 - True copy of the judgment of this court in WPC 22628/2003R
Ext P6 - True copy of the Board order No BO (FB)927/2004 (LAS 1) 15882/2003) dated 15.4.2004
Ext.P7 - True copy of the order B.O No AE 588/60 dated 30.3.1962 of the respondents.
Ext.P8 - True copy of G.O.(Ms) No 70/83/W&P dated 23.11.1983
Ext.P9 - True copy of the order B.O.No PSI/84/89 (IB) dated 10.4.1970 of the respondent
Ext.P10 - True copy of the judgment of this court in OP 3291/1992
Ext.P11 - True copy of the order No EB/Gr 3/AE/99 dated 14.10.1999 of the respondents.
Ext.P12 - True copy of the Board Order No BOFB No 450/2003 Estt II/6629/93 dated 4.4.2003

[true copy]

WPC 33749 OF 2005

Appendix

Petitioners' exhibits:

Ext.P1 - True copy of the order EB1(a)/AE (Ele)/158/2004 dated 15.6.2004 of the second respondent.
Ext.P2 - True copy of the order No EB1(a)/AE(Ele) 158/2005 dated 1.1.2005 of the second respondent
Ext.P3 - True copy of the G.O.(Ms) No 13/90/FD dated 21.3.1990
Ext.P4 - True copy of the G.O.(Ms) No 2/05/PD dated 21.3.1990
Ext.P5 - True copy of the judgment of this court in W.P.C. No 22628/2003
Ext P6 - True copy of the Board Order No B.O (FB)927/2004 (LAS 1) /15882/2003 dated 15.4.2004

[true copy]